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SECTION ANALYSIS

To accompany the draft bill to amend title 5, United States Code, to establish and govern the Federal Executive Service, and for other purposes

The bill is divided into six sections. Section 1, which is divided into ten paragraphs, amends title 5, United States Code, to establish and govern the Federal Executive Service. Sections 2 through 6 are not amendments of title 5, but contain provisions needed for the transition from the Executive Assignment System to the Federal Executive Service. The separate sections, paragraphs, and subparagraphs of the bill are discussed hereinafter.

Section 1

Paragraph (1) adds a reference to 5 U.S.C. 3143(c) in 5 U.S.C. 1305 so that the Civil Service Commission is authorized to perform all actions regarding hearing examiners paid under the newly added section 3143(c) that it has been performing with respect to hearing examiners paid under the General Schedule.

Paragraph (2) adds a new subsection (f) to 5 U.S.C. 1308, "Annual reports," which requires an annual stewardship report by the Civil Service Commission to Congress on the Federal Executive Service. This annual stewardship report serves three important purposes. First, it will fully inform Congress on the operation of the Federal Executive Service for the previous fiscal year. Second, it will fully inform Congress as to the proposed scope and operation of the Federal Executive Service for the coming fiscal year. This will enable Congress to maintain an informed and positive legislative oversight over the Federal Executive Service. Third, the detailed and comprehensive nature of the stewardship report required by the new subsection will serve to inform the general public of the actions that its Government is taking, and proposes to take, with respect to the management of its executive resources.

The stewardship report is required to be submitted before April 1 of each year in order that Congress will have a full 90-day period to review it before the end of the fiscal year in which it is submitted and the start of the next fiscal year during which the newly proposed number of executive appointments, ratios, and executive pay average are to be applicable.

Under the new section 1308(f)(2), the Civil Service Commission allocations of the number of proposed executive appointments, the ratios of career to noncareer appointments, and the executive pay average are effective 90 days after the submission of the report.

Paragraph (3) is the "heart" of the bill. It makes several amendments to chapter 31 of title 5, United States Code, which establish and govern the

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Federal Executive Service. Paragraph (3) is divided into five subparagraphs, two of which are technical (subparagraphs (A) and (B)) and three of which are substantive (subparagraphs (C), (D), and (E)). They are explained separately as follows:

Subparagraph (A)

Subparagraph (A) will amend the chapter analysis of chapter 31 (some refer to it as the "table of contents") so that it will properly reflect the content of the chapter after the bill is enacted. As shown in the amended chapter analysis, a new subchapter has been added to chapter 31 of title 5, United States Code, which contains all permanent statutory provisions concerning the Federal Executive Service.

Subparagraph (B)

Subparagraph (B) will insert a new subchapter designation for the present provisions of chapter 31. This is a technical necessity caused by the new division of the present chapter into two subchapters creating a need for a new subchapter designation covering the provisions that were in the chapter before its amendment by the bill.

Subparagraph (C)

Subparagraph (C) would repeal 5 U.S.C. 3104 concerning the employment of specially qualified scientific and professional personnel. Section 3104 is a special employment authority which (together with 5 U.S.C. 5361) authorizes the filling of the positions described therein at GS-16, 17, and 18 of the General Schedule. As the General Schedule will no longer contain GS-16, 17, or 18, and as all such positions are now authorized by and paid under the provisions of this bill, the section is no longer necessary.

Subparagraph (D)

Subparagraph (D) would delete from 5 U.S.C. 3109, "Employment of experts and consultants; temporary or intermittent", the reference therein to 5 U.S.C. 5332, "The General Schedule", and in lieu thereof include a reference to 5 U.S.C. 3139 which is the new statutory pay authority for executives. This amendment means that the rate of pay for experts and consultants may not exceed the daily equivalent of the highest rate payable to a member of the Federal Executive Service.

Under 43 Comp.Gen. 509 it was held that experts and consultants in the fields of physical and natural sciences, engineering, and medicine could be paid at the rate of GS-16, 17, or 18 as there was no numerical limitation on positions of those types or those grades; whereas all other experts and consultants were limited to the equivalent of the highest rate for GS-15. Under the new subchapter II of chapter 31 of title 5 there will be no distinctions between the types of executives who may be appointed in the Federal Executive Service. Also, 5 U.S.C. 5108 which contained the language that distinguished positions in the fields of physical and natural sciences,

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engineering, and medicine from other positions will be repealed by this bill. Because of the absence of these distinctions, and in recognition of the need to adequately pay all experts and consultants, the pay maximum has been made the same for all experts and consultants. Agencies will, of course, still decide the correct pay rate on the basis of the individual expert's or consultant's qualifications.

Subparagraph (E)

Subparagraph (E) will add a new subchapter II to chapter 31 of title 5, United States Code. The new subchapter establishes and provides for the administration of the Federal Executive Service. The new subchapter contains thirteen sections which are discussed separately hereinafter.

§ 3131. Purpose. This section states the purpose of the subchapter and, in addition, the purposes of the Federal Executive Service.

§ 3132. Definitions. Paragraph (1) of § 3132 defines "agency." The definition covers each executive agency as defined in 5 U.S.C. 105 (except the General Accounting Office which is excluded by § 3132(1)(i) and each military department as defined in 5 U.S.C. 102. The military departments are mentioned specifically so that they may make executive appointments independently of the Department of Defense just as they may now do with regard to positions in GS-16, 17, and 18. The General Accounting Office is specifically excluded as it is the only non-executive agency included in the defined term "executive agency" in 5 U.S.C. 105 (by reason of 5 U.S.C. 104(2)). The paragraph excludes the twelve agencies named in clauses (i) through (xii), the two offices in the Treasury Department named in clause (xiii), and the Federal Bureau of Investigation named in clause (xiv), as one (the General Accounting Office) is outside the executive branch and the others have separate personnel systems for their executive-level employees which, by reason of the unique nature of their missions, are not suited for coverage under the Federal Executive Service and (with the exception of the United States Postal Service and the Federal Bureau of Investigation) presently have no positions allocated in GS-16, 17, or 18.

Paragraph (2) of § 3132 adds a definition of the term "executive" for convenient usage and for the purpose of limiting the use of the term in subchapter II of chapter 31 of title 5, United States Code, to executives paid at a rate that is not less than the sixth rate of GS-15 of the General Schedule and not more than the rate for level V of the Executive Schedule. These are essentially the same dollar amounts that now are fixed for GS-16 through GS-18 of the General Schedule. The definition serves as a means of excluding from the subchapter and from the Federal Executive Service the incumbents of the positions specified in subparagraphs (A) through (H) of § 3132(2).

Subparagraphs (A) through (G) are self-explanatory. Subparagraph (H) authorizes the President to issue regulations which exclude an employee or a group of employees from the Federal Executive Service on any one of three bases. An exclusion may be based on national security interests, foreign relations, or a finding that an employee or group of employees perform unique functions that cannot readily adapt to the Federal Executive Service programs.

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§ 3133. The Federal Executive Service. This section describes the make-up of the Federal Executive Service. The Service is made up of the executives (both career and noncareer) whose appointments are authorized under 5 U.S.C. 3134. There are no "positions" centrally established or authorized, as that term is commonly used, in the Federal Executive Service. After an executive is appointed in the Service he is given an assignment by the agency and is subject to the organization management system of the agency in which he is appointed.

§ 3134. Authorization of executive appointments and ratios. Subsection (a) of § 3134 requires that each agency examine its executive manpower needs and submit a written request to the Civil Service Commission, in accordance with regulations prescribed by the Office of Management and Budget and the Civil Service Commission, for authority to appoint a specific number of executives in the agency within the Federal Executive Service. This request is required to be based on the following factors:

(1) the current level of budget and program activity in the agency;
(2) the current level of executive staffing in the agency;
(3) the anticipated agency program activity and agency budget requests;
(4) pending legislation;
(5) the level of work to be done in the agency; and
(6) such other factors as may be prescribed from time to time by the Office of Management and Budget and the Civil Service Commission.

When this examination by an agency of its manpower needs is made, the Commission, under its regulatory authority in § 3142, will require that the examination expressly cover the need to continue the number of executive appointments heretofore authorized.

Subsection (b) of § 3134 requires that each agency shall include in the request for executive appointment authority referred to in § 3134(a), the number of appointments requested that it proposes to fill by career appointment and the number it proposes to fill by noncareer appointment. Subsection (b) fixes the total percentage of noncareer appointments throughout the entire Federal Executive Service at a maximum of 25%, but expressly authorizes the Civil Service Commission to vary the ratios of career to noncareer appointments within separate agencies as the differing needs of the agencies require. This means, for example, that Agency A may have need for only a relatively few noncareer appointees and, accordingly, within that agency the Commission would authorize a ratio of 90% career executives to 10% noncareer executives. On the other hand, Agency B may have a legitimate need for relatively more noncareer executives in which case the Commission would authorize a ratio for Agency B of 60% career executives to 40% noncareer executives. At the same time that individual agency ratios are being authorized by the Commission, the Commission has the responsibility to ensure that the total number of noncareer executives throughout the Federal Executive Service does not exceed 25%.

Subsection (c) empowers the Civil Service Commission to determine when, within each year, the agency request for executive appointments and the ratios will be submitted and in what form that submission will be made. As 1308(f) of title 5, United States Code, requires the Commission to submit its annual stewardship report before April 1 of each year, the date by which the Commission will require each agency to submit its request will be [illegible]

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at a reasonable point before that April 1 date to allow for the preparation of the annual stewardship report. The Commission may, if it considers it appropriate and beneficial, require different agencies to report at different times.

Subsection (d) requires that the Commission, after its receipt of each agency's request for a specific number of executive appointments and a ratio, review the request and determine whether the request is justified and appropriate. In reaching its determination, the Commission will collaborate with the Office of Management and Budget in the Executive Office of the President. This collaboration recognizes the fact that executive manpower needs flow from approved programs and budgets.

Subsection (e) provides the Civil Service Commission with a limited authority to adjust, after collaboration with the Office of Management and Budget, the number of executive appointments and ratios in the Federal Executive Service when required by emergency circumstances and needs that were not foreseen when the annual stewardship report was submitted to Congress. The statutory limitation on this emergency authority is that the Service may not be enlarged more than 1 percent in a single fiscal year. As it is contemplated that the initial size of the Federal Executive Service will be 7,000 (approximately the current number of GS-16, 17, and 18 and Public Law 313-type employees), the maximum number of additional executive appointments that the Commission could include in the Service in one fiscal year in an unforeseeable emergency would be approximately 70. Whenever any adjustment of either the number of executive appointments or the ratios is made under this subsection, the Commission is required to include full information concerning the adjustment in its next annual stewardship report to Congress.

§ 3135. General authority to appoint executives; characteristics of career and noncareer appointments. The first subsection of § 3135 specifies that the head of the agency in which an executive is to be appointed has authority to determine whether the executive will receive a career or a noncareer appointment. The placing of this exclusive authority with agency heads is one of the paramount new features of the Federal Executive Service. If a career appointment is to be made, the appropriate review and approval procedures of a Qualifications Board, as contained in section 3136, must be followed.

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Paragraphs (1) and (2) of § 3135(a) state the considerations that an agency head uses to decide whether a particular appointment is to be career or noncareer. This decision does not necessarily determine the nature of the assignment into which the executive is placed. The decision relates solely to the type of appointment to be made. Career appointments are for executives who are expected to make a career in Government; they are generally equivalent to the incumbents of positions that were in the competitive service in GS-16, 17, and 18 of the General Schedule before the establishment of the Federal Executive Service. Noncareer appointments are for executives in whom management has special confidence because of a personal or political relationship or because of the executive's program philosophy. This group also includes executives with specialized skills for short-term public projects or with only a temporary interest in a Government assignment or program. The noncareer executives are generally equivalent to the incumbents of positions that were in the excepted service in Schedule C and noncareer executive assignment positions in GS-16, 17, and 18 of the General Schedule before the establishment of the Federal Executive Service.

Subsection (b) sets forth the characteristics of the career executive appointee. Such an appointee is not required to serve a probationary or trial period as the recruitment and selection procedures required for such an appointment serve to guarantee that these appointees are exceptionally well qualified, making the principle of the probationary or trial period inapplicable to them. Also, it is expected that the vast majority of career appointments will be given to individuals who have served considerable periods of time in lower grade levels in the competitive service. The career executive is, from the first day of his appointment, in the competitive service and has a competitive status. This means that he is immediately covered by the adverse action procedures set out in 5 U.S.C. 7501 and 5 CFR Part 752 by reason of the fact that those procedures apply to an individual "in the competitive service" (see 5 U.S.C. 7501). Paragraph (3) of subsection (b) of § 3135 is included so there will be no doubt that a career executive who is a veteran (i.e., a preference eligible as defined in § 2108(3) of title 5 of the United States Code) is covered by the job protection provisions of section 14 of the former Veterans' Preference Act (now subchapter II of chapter 75 and § 7701 of title 5, United States Code) from the first day of his career appointment in the Federal Executive Service.

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Subsection (c) of § 3135 contains the characteristics of the noncareer executive. Such a noncareer appointment does not place the appointee in the competitive service nor does it entitle him to a competitive status. The noncareer executive has no fixed tenure and he "serves at the will of the appointing authority". The quoted words are identical to those which appear in 5 U.S.C. 3323(b) relative to a reemployed annuitant. By reason of the inclusion of these words in § 3135(c), a preference eligible executive serving under a noncareer appointment is not entitled to the job protection benefits of section 14 of the former Veterans' Preference Act (now principally in 5 U.S.C. 7512 and 7701) regardless of how long he has served in such an appointment. By the same token, a nonveteran noncareer executive has no job-protection benefits. The decision to effect the separation of a noncareer executive (veteran or nonveteran) is exclusively

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that of the agency head. The reasons or bases for the agency head's decision are not reviewable by the Civil Service Commission or any other administrative authority, except when the separated noncareer executive contends that the separation was based on discrimination because of his "race, color, religion, sex, or national origin" in violation of the policy of the United States expressed in 5 U.S.C. 7151, or his "marital status" or "physical handicap" as referred to in 5 U.S.C. 7152 and 7153. An allegation of political discrimination, e.g., that the separation of the noncareer executive was based on political reasons, does not afford a basis for the Commission or any administrative authority to review the separation action taken by the head of the agency.

The noncareer executive does not serve under an employment agreement of any type and he has no continued employment guarantee. This means that the head of the agency in which the noncareer executive is employed may increase or decrease the noncareer executive's pay at will and without advancing any reason so long as the pay remains within the limits set out in 5 U.S.C. 3139. In addition, the absence of a continued employment guarantee means that regardless of how long a noncareer executive serves in such an appointment, or series of them, he is not entitled, when separated, to placement elsewhere in the agency or in the Government service, and he is not entitled to severance pay under 5 U.S.C. 5595. (The incumbents of these positions will be excluded from severance pay entitlement by the Civil Service regulations issued under 5595 just as those regulations now exclude positions filled by noncareer executive assignment and positions in Schedule C, see 5 CFR 550.701(b)(8) revised as of January 1, 1970.) It should also be noted that regardless of how long an executive serves under a noncareer appointment, or series of them, he is not entitled, if reduced in pay, to saved pay under 5 U.S.C. 5337 as he is not (as required by § 5337(a)(1)) "reduced in grade from a grade of the General Schedule."

§ 3136. Career appointments. Subsection (a) of § 3136 governs the recruitment and selection of candidates for career appointments in the Federal Executive Service. The high caliber of these candidates is assured by the dual requirements in paragraphs (1) and (2) of § 3136(a). The recruiting program is required to reach all sectors (private as well as governmental) and must evidence that the best talent available was considered. For the purpose of section 3136 the term "outside the civil service" includes, in addition to the private sector, State and territorial governments, any political subdivision of either a State or territorial government, and the government of the District of Columbia. Subsection (a) of § 3136 requires the Civil Service Commission to assist every agency in its recruiting and selecting activities. The Commission's assistance is to assure that the agency has before it for its consideration and selection the best talent available after a broad-base recruitment effort. The Commission will make full use of its Executive Inventory and all other Commission resources in aiding agencies under subsection (a) of § 3136.

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Subsection (b) of § 3136 requires each agency which selects a candidate for career executive appointment to submit documentation that establishes his qualifications, and which shows the nature of the recruitment effort made, to a Qualifications Board. Except as provided in subsection (d) of § 3136, which is discussed subsequently herein, an agency may not make a career appointment to a position in the Federal Executive Service without the prior approval of a Qualifications Board.

Subsection (c) of § 3136 requires that an employment agreement be entered into between the employing agency and the candidate approved by a Qualifications Board before a career appointment to a position in the Federal Executive Service may be effected.

Subsection (d) of § 3136 authorizes career appointments in the Federal Executive Service without the approval of a Qualifications Board under two conditions. The first condition is when the appointment is by transfer from one career appointment in the Federal Executive Service to another career appointment in the Service. The second condition is when the appointment is by a renewal employment agreement entered into not later than 1 year after the executive's separation from, or the expiration of, a previous employment agreement. The 1 year limitation is to assure that the former executive's qualifications are current. If he is out of the Federal Executive Service for more than 1 year, his current qualifications must be evaluated again by a Qualifications Board.

§ 3137. Employment agreements. Subsection (a) provides for two types of employment agreements. The first employment agreement entered into by an executive is the initial employment agreement and each employment agreement entered into thereafter by that executive is a renewal employment agreement.

Subsection (b) of § 3137 fixes the employment period for an initial employment agreement at 3 years, except when the executive covered under the agreement is required to be separated sooner than 3 years by operation of the mandatory separation provision of the retirement statute. That statute, 5 U.S.C. 8335, requires the separation of an employee who becomes 70 years of age and who has completed 15 years of service, provided he served under the retirement system for at least 1 year within the 2 years immediately preceding his separation (5 U.S.C. 8331(b)). An executive separated because of age may be reappointed under a renewal employment agreement, but if this is done he serves at the will of the appointing authority by reason of 5 U.S.C. 3323(b).

Subsection (c) of § 3137 fixes the employment period for a renewal employment agreement at 3 years unless his separation in less than 3 years is required by operation of 5 U.S.C. 8335. However, when a renewal employment agreement is made by reason of a transfer from an initial employment agreement, the employment period may run only to the date the initial employment agreement would have ended.

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Subsection (d) of § 3137 sets out 6 specific provisions obligating an agency with respect to every employment agreement (initial or renewal). Paragraph (1) requires that an agency shall not assign an executive to duties and responsibilities that are not truly of an executive caliber. For example, an agency could not assign an executive to duties properly classifiable at grade GS-15 or below of the General Schedule.

Paragraph (2) obligates the agency to provide the executive with training and career development opportunities. These have the dual purpose of enhancing the individual professional and managerial development of the executive and promoting the program needs of the agency.

Paragraph (3) bars an agency from reducing the pay of a career executive during a period of continuous service in the Federal Executive Service. This means that a career executive's initial rate of pay may not be decreased during his continuous service in the Federal Executive Service, and if an agency increases an executive's pay during his employment period he must continue to be paid at that higher rate of pay for the remainder of his continuous service in the Federal Executive Service.

Paragraph (4) prevents an agency from separating an executive during an employment period except for "cause" or when the Civil Service Commission finds that because of physical disability he is not able to perform useful and efficient service in the executive position. A separation for "cause" is, generally, a separation due to delinquency or misconduct. The term used, "for such cause as will promote the efficiency of the service" comes from 5 U.S.C. 7501 and 7512 which relate to adverse actions taken against employees in the competitive service and preference eligible employees (veterans for example). No other separations of executives during the employment period are permitted.

Paragraph (5) specifies that an executive is free to leave his current executive appointment at any time by resignation, transfer to other employment either within or outside the Federal Executive Service, or by retirement either for disability or by optional retirement.

Paragraph (6) obligates the agency, when the employment agreement for an executive expires, to either continue him in the Federal Executive Service under a renewal employment agreement, place him in a GS-15 position in the competitive service with saved pay for 2 years as required by 5 U.S.C. 3140(b) and (c), or (when he has completed 30 years of service) separate him for retirement purposes under 5 U.S.C. 3140(a).

Subsection (e) of § 3137 requires that each employment agreement shall require the executive to agree that he will accept any assignment of duties that is a bona fide executive assignment. Such an assignment may be at any geographical location selected by the agency and the executive must agree to go to whatever location the agency selects. An agency's failure to give an executive a proper executive assignment is cause for an appeal

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to the Civil Service Commission under the newly created 5 U.S.C. 7702. An executive's failure to accept a valid executive assignment at a different geographical location is cause for the agency to separate the executive. However, in the event that a geographical move would entail undue hardship, by mutual agreement the executive may be placed in a position at grade GS-15 or below with 2 years salary saving, or he may be separated and receive severance pay or discontinued service annuity. If the executive and the agency cannot agree that a hardship exists, the executive may appeal to the Civil Service Commission whose decision will be binding. Regulations will be issued by the Civil Service Commission to carry out this provision. In the absence of a hardship situation, if the agency separates an executive for failing to move geographically, such a separation would not entitle the separated executive to either severance pay under 5 U.S.C. 5595 or a discontinued service annuity under 5 U.S.C. 8336(d). Subsection (e) also requires the executive to agree to participate in those training and career development activities which his agency decides will enhance his individual proficiency as an executive and will promote the agency's program needs.

§ 3138. Qualifications Boards. Subsection (a) of § 3138 requires the Civil Service Commission to establish Qualifications Boards as the agents of the Commission which will review the qualifications of candidates for career appointments in the Federal Executive Service, to determine that the candidate an agency has selected for appointment is among the most highly qualified of the candidates considered. The Board, in each case, in addition to reviewing the qualifications of the candidates, will review the agency's recruitment effort to make certain that it encompassed the full, broad-base coverage required by the newly added § 3136(a) of title 5, United States Code. If a Qualifications Board finds that the recruitment effort was not sufficient, or that the candidate is not among the most highly qualified, it will not approve the selection made by the agency and the agency will have to extend its recruiting effort, select another candidate, or present additional evidence to the Board supporting its selection.

Under subsection (b) of § 3138 the Commission may establish different Qualifications Boards for different programs, professions, and executive occupations. For example, a Board made up of managers or executives from both Government and the private sector, while qualified to pass on the qualifications for a candidate for a career executive appointment whose experience and background is in management, would not have the necessary expertise to pass on the qualifications of a candidate whose experience and background is in one of the sciences (e.g., medicine, physics, mathematics). Separate Boards - composed of specialists in separate fields - are essential to assure a truly informed review of each candidate's qualifications.

The Commission is responsible for appointing as members of each Qualifications Board individuals who are established to be experts in their field and are recognized as such by their colleagues. Board members who are employees of executive agencies (other than the Civil Service Commission) may serve on a reimbursable detail under 31 U.S.C. 686. Board members employed by the government of the District of Columbia may also serve on a reimbursable detail

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with subsection (b) of § 3138 constituting the specific authority for that reimbursement. All other Board members are appointed as experts or consultants under 5 U.S.C. 3109 and their pay is fixed by the Civil Service Commission at a daily equivalent that does not exceed the maximum payable to an executive under newly established 5 U.S.C. 3139.

§ 3139. Pay. There are no "positions" in the Federal Executive Service and, accordingly, no "class" or "class of positions" as those terms are used with regard to positions covered by the General Schedule. The pay of a member of the Federal Executive Service is fixed by the agency in which he is employed. The agency has the authority to fix an executive's pay at any rate it selects within the minimum and maximum rates established by § 3139(a) so long as the pay of all executives in the agency does not exceed the executive pay average explained hereinafter. An executive's pay is based on such factors as his value to the agency, his duties and responsibilities in the assignment given him by the agency, and his job performance. The only restriction on the agency's general authority to fix the pay of the individual executives it employs is the statutory prohibition which prevents the average pay of all executives within the agency exceeding the executive pay average established by the Civil Service Commission after collaboration with the Office of Management and Budget. The executive pay average cannot be exceeded by an agency except when the Civil Service Commission determines that special executive staffing circumstances within a particular agency justify a higher average pay for that particular agency. Provision is made for automatic pay increases for executives whenever there is an increase in the sixth rate of GS-15 as long as the increase does not exceed the executive-pay ceiling set out in the section.

§ 3140. Continued employment guarantees; separation benefits. Each subsection of § 3140 spells out the particular employment guarantees and separation benefits applicable to the different situations that may arise when a career executive's employment agreement (either an initial employment agreement or a renewal employment agreement) expires.

Subsection (a) covers the situation in which an executive has 30 years of service creditable for retirement purposes under 5 U.S.C. 8332 at the time of the expiration of his employment agreement. In that situation the agency may, at its election, separate the executive from the service without making him an offer of a continuing position in GS-15 as explained in the comment relative to subsection (b) of this § 3140. Such a separation is an involuntary separation for the purposes of 5 U.S.C. 8336(d) and the executive so separated is entitled to an annuity under that subsection or any other subsection of 5 U.S.C. 8336 if otherwise eligible.

Subsection (b) covers the situation in which the employment agreement expires and the agency either does not offer the career executive a renewal employment agreement or makes such an offer but the executive elects not to enter into the renewal employment agreement and (in the case of an executive with 30 years of service) the executive is not separated under subsection (a) of this § 3140. In this situation, the agency is obligated to offer the career executive continued employment in a GS-15 position in the competitive service in the agency. The offered position must be one which means one that there is reasonable cause to believe will last indefinitely. An offer to place the executive in what is known to be a temporary job or one that is

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known to have but a limited furation will not meet the statutory requirement in § 3140(b). In addition, as will be spelled out in the regulations of the Civil Service Commission authorized by § 3142, the Commission will require that the offer of the GS-15 position be made at such a time in advance of the expiration of the employment agreement that the executive has a reasonable opportunity to consider the offer (e.g., the nature of the position offered, the work surroundings including the geographical location, and all other facets one takes into consideration in deciding whether to accept an offer of permanent employment) and so that he may enter on duty in the GS-15 position without a break in service.

Note that the offer of the GS-15 position to the executive must not cause the displacement or reduction in grade of any agency employee already serving in GS-15.

Subsection (c) of § 3140 deals with the placement of the executive in the proper rate and step of GS-15 when he accepts the offer of such a position made under subsection (b). Paragraph (1) assures that the executive will, at the minimum, have his Federal Executive Service pay rate saved for 2 years from the date he enters on duty in the GS-15 position. He may, however, by reason of the required-service-credit benefit in paragraph (1) be entitled to a higher rate of pay in the GS-15 position than he was receiving immediately before his career executive employment agreement expired. For example, assume that before the executive entered the Federal Executive Service he was in the 5th step of GS-15 being paid $27,483 per annum and he had been in that step for 52 calendar weeks. Under 5 U.S.C. 5335(a)(2) and (3) the waiting period for a step increase from steps 5 and 6 is 104 calendar weeks and from step 7 it is 156 calendar weeks. The executive accepts an appointment in the Federal Executive Service at $29,000 and he remains in the Service for 6 years with the same pay throughout his career in the Service. When his employment agreement expires he is entitled to count both his previous service in GS-15 not previously used for step increase purposes (which means the 52 calendar weeks he had to his credit when he left that grade) and his 6 years' service (312 calendar weeks) in the Federal Executive Service toward the waiting period in GS-15. Therefore, the returned, former executive would be credited, first, with the 104 calendar weeks to take him from step 5 to step 6; then with the 104 calendar weeks to take him from step 6 to step 7; and then with the remaining 156 weeks which would take him from step 7 to step 8. Thus, he would return to grade GS-15 at step 8 with a pay rate of $29,907 which is higher than his rate in the Federal Executive Service immediately before his employment agreement expired.

The former executive will be entitled under § 3140(c)(1) to the saved pay for 2 years so long as he meets the conditions in subparagraphs (A) and (B), and (C) of paragraph (1) of that subsection which are identical to those in the regular pay saving section, 5 U.S.C. 5337.

Under § 3140(c)(2), when the period of saved pay ends the former executive has the right to be placed in the step of GS-15 that he would have been in had his service in the Federal Executive Service been in that grade, plus full credit for any previous service he may have had in that grade which he has not already used for step increase purposes. This provision is needed for those former executives who, under § 3140(c)(1), retained their

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Subparagraph (3) of § 3140(c) is needed by reason of the fact that members of the Federal Executive Service are not rated on acceptable level of competence but such a determination is needed for normal step increase purposes when the former executive enters the GS-15 position. Also, in order to prevent any misunderstanding over the effect of a pay increase the executive may have received in the Federal Executive Service, such an increase is deemed not to have been "an equivalent increase" for periodic step increase purposes (5 U.S.C. 5335(a)(A)). These are technical provisions needed to prevent any delay in the former executive's attaining the step in GS-15 to which § 3140 is intended to entitle him.

Subsection (d) of § 3140 covers the situation in which an agency does not offer an executive a renewal employment agreement and the executive declines the agency's offer of a position in GS-15. When that occurs, the executive is entitled to either a discontinued service annuity or severance pay provided he meets the regular requirements for either of those benefits. In order to make this entitlement clear, paragraphs (1) and (2) specify that the separation of an executive in this situation is "involuntary".

Subsection (e) of § 3140 applies to the situation in which the agency offers the executive a renewal employment agreement which he declines; then the agency offers him a competitive service continuing position at GS-15 which he declines. In such a case, subsection (e) makes clear that the executive is not entitled to either a discontinued service annuity or to severance pay.

§ 3141. Report to Congress. § 3141 supplements the new 5 U.S.C. 1308(f) which requires an annual stewardship report to Congress on the Federal Executive Service. As expressly provided in the last sentence of this section -- and as specified in 5 U.S.C. 1308(f)(2) -- the authorized number of appointments, ratios and executive pay average become effective 90 days after the stewardship report to Congress.

§ 3142. Regulations. This section authorizes the Civil Service Commission to prescribe regulations necessary to carry out the purposes of subchapter II of chapter 31 of title 5, United States Code, except § 3143. Section 3143 is excepted from the general regulatory authority of the Commission as portions of that section cover agencies in the judicial and legislative branches as well as agencies in the executive branch. It is not considered appropriate for a personnel-system regulatory provision, such as this section is, to extend to judicial and legislative agencies when it is evident that with regard to the subject matter here covered the full control of such nonexecutive agencies properly belongs outside the executive branch.

§ 3143. Executive management outside the Federal Executive Service. The government of the District of Columbia and each agency in the judicial or legislative branch in which there are positions the basic pay for which is at an annual rate that is not less than the sixth rate of GS-15 nor more than the rate for level [illegible] Executive Schedule and which are

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not paid under either the General Schedule nor under the Executive Schedule but, instead, under a regulatory counterpart to the new section 3139 which would be in effect by reason of section 6(b) of the Act, (the approximate pay range of GS-16 through GS-18 of the General Schedule in effect immediately before the enactment of this bill) are required, by subsection (a) of § 3143, to issue regulations which, to the maximum extent possible, adopt for that government and those agencies a program for executive recruitment, selection, employment, and subsequent placement that is like the statutory Federal Executive Service program. Under this requirement the government of the District of Columbia and each agency would make a recruitment effort for career executive candidates like that required for candidates for career appointment in the Federal Executive Service. The government and the agency would fix an authorized number of executive appointments, the ratio of career to noncareer appointments, the pay for executives, and the continued employment guarantees and separation benefits all in a like manner to that required by the statute for the Federal Executive Service. The government or an agency could not pay one of its executives more or less than the pay rate specified in the new 5 U.S.C. 3139; and the ratio of career to noncareer executive appointments could not be less than a ratio authorized in or under 5 U.S.C. 3134(b).

The government of the District of Columbia and each judicial and legislative agency (including the General Accounting Office) having a regulatory program under § 3143(a) would be required under this section to submit a stewardship report to Congress (like that required of the Civil Service Commission by the new 5 U.S.C. 1308(f)(2)) for the purpose of authorizing the number of executive appointments, the ratios of career to noncareer appointments, and the executive pay average for the coming fiscal year.

Subsection (b) of §3143 requires the Civil Service Commission, at the request of the government of the District of Columbia or a judicial or legislative branch agency having a regulatory program of executive management under § 3143(a), to give that government or the agency advice and assistance which may include the use of one or more of the Commission's Qualifications Boards and the Executive Inventory maintained by the Commission. As some nonexecutive branch agencies have only a small number of executives, the use of the Qualifications Boards established by the Civil Service Commission is intended to provide a prompt and economical means of assuring that high quality executive candidates are selected for appointment under the regulatory program.

Subsection (c) will constitute the pay authority for hearing examiners appointed under § 3105 of title 5, United States Code, who are not paid under the General Schedule. Hearing examiners will continue to be paid under this subsection just as they are paid at the present time but as there will no longer be any GS-16 or GS-17 grade in the General Schedule this subsection is necessary to provide a pay authority.

Paragraph (1) of subsection (c) is essentially the same as 5 U.S.C. 5362, the authority under which the Civil Service Commission fixes the pay of hearing examiners who are paid under the General Schedule. Under paragraph (1)

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the Commission, rather than the agency employing the hearing examiner, will continue to fix the pay of hearing examiners "independently of agency recommendations or ratings".

Paragraph (2) of subsection (c) places the same minimum and maximum limits on the Commission's pay authority in paragraph (1) of subsection (c) as are placed on members of the Federal Executive Service by the new § 3139. At present, under the General Schedule, no hearing examiner is in GS-18 but it is possible that the duties and responsibilities of a hearing examiner could at some future time justify the Commission in fixing the pay of a hearing examiner as high as the present GS-18 rate. The new paragraph (2) would permit pay at that rate if warranted.

Paragraph (3) of subsection (c) supplies the Civil Service Commission with the authority necessary to enable it to create a regulatory pay system for hearing examiners that is like the one in existence today under the General Schedule.

Subparagraph (A) of paragraph (3) will require the Commission to establish the grades of difficulty for hearing examiner positions. This means that the Commission, following the principles in 5 U.S.C. 5101 (equal pay for substantially equal work; pay variations in proportion to substantial differences in work responsibility, qualification, requirements, and the hearing examiner's contribution to the efficiency and economy of the service) will prepare and publish in its regulations the bases for grading hearing examiner positions. These are needed since the bases for grading GS-16, 17, and 18 of the General Schedule (5 U.S.C. 5104(16), (17), and (18)) will be repealed by the enactment of the bill. The bases for the hearing examiner pay rates will be like the present bases for GS-16, 17, and 18 modified as appropriate for the duties and responsibilities of hearing examiners. No hearing examiner will be increased or decreased in pay by reason of the bases which the Commission will prescribe under this subparagraph.

Subparagraph (B) of paragraph (3) requires the Civil Service Commission to include in the regulations that control the pay of hearing examiners not paid under the General Schedule provisions that will govern the rate for new appointments, the rate on change in position or type of appointment, periodic increases in pay, and pay saving. As required by the subparagraph, these regulatory provisions must be consistent with the present provisions in the sections of title 5 of the United States Code cited in the subparagraph. This will assure that even though those statutory provisions are no longer applicable to hearing examiners paid under this § 3143(c), they will continue to have all the benefits of those statutory job classification and pay-rate-fixing provisions.

Subsection (d) of § 3143 -- while not mandatory -- urges or encourages the agencies exempted from subchapter II of chapter 31 of title 5, United States Code, to adopt as many features of the Federal Executive Service program as can be used by such an exempted agency. In addition, under this

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subsection, if an exempted agency needs assistance from the Civil Service Commission (such as the use of a Qualifications Board or the Commission's Executive Inventory), the agency is entitled to request and receive that assistance.

This subsection (d) of section 3143 is the last provision in the newly added subchapter II of chapter 31 of title 5, United States Code.

Paragraph (4) makes necessary amendments to chapter 33 of title 5, United States Code, to enable the Federal Executive Service program to operate.

Subparagraph (A) makes a significant amendment to § 3302 which will enable the President to include in the Civil Service Rules (Title 5, Code of Federal Regulations, Chapter I, Subchapter A) exceptions from several specified sections of title 5, United States Code, necessary for the operation of the Federal Executive Service. The need for the excepting authority for each section of title 5 referred to in the newly added § 3302(3) is explained as follows:

- § 2951. The Federal Executive Service program has its own specific reporting requirement (5 U.S.C. 1308(f)), hence, there is no need for 5 U.S.C. 2951 to apply to it.

- §§ 3304 and 3305. The Federal Executive Service Program has a review-of-qualifications procedure designed specifically for executive procurement and selection. Therefore, the competitive-examination requirements in these sections would not be applicable to the program.

- § 3306. Apportionment is not applicable to promotion actions. Since the majority of appointees to the career executive group will come from employees already in the competitive service to whom apportionment does not apply in a consideration for promotion, it would not be appropriate to apply it to the small number of persons selected from outside.

- § 3308. The prohibition against minimum educational requirements would not be appropriate to the professional types of assignments given members of the Federal Executive Service and, hence, 5 U.S.C. 3308 should not be applicable.

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- § 3309. Candidates for the Federal Executive Service are not "graded" in the usual sense of competitive civil service examinations, accordingly, it is not possible to give additional "points" for veteran's preference in the selection and review process established for the Federal Executive Service program. This is especially so since the majority of appointees to the career executive group will come from those already in the competitive service and who presently do not receive veterans' preference points for promotion consideration.

- § 3311. All experience that a candidate has which relates to his qualifications for appointment as an executive will be reviewed, including any military or nonpaid experience, and used to determine if he is one of the most highly qualified candidates considered. Thus there is no need for 5 U.S.C. 3311.

- § 3313-3315a. Since the usual type of civil service competitive examinations are not used to determine the qualifications for candidates for the Federal Executive Service there are no "registers" or "employment lists" for such candidates and therefore these sections of title 5 would not be applicable to the Federal Executive Service program.

- § 3316. The only means of entry into the Federal Executive Service are those specified in subchapter II of chapter 31 of title 5, United States Code. This means that "reinstatement", as that term is used with respect to other competitive service appointments, is not applicable to the Federal Executive Service.

- §§ 3317 and 3318. Since these sections apply to the certification and selection for competitive appointment from registers, and since no registers are established under the Federal Executive Service qualifications-review process, these sections would not be appropriate for the Federal Executive Service program.

- § 3320. The Federal Executive Service does not include the government of the District of Columbia and, accordingly, 5 U.S.C. 3320 has no applicability to the Service.

- § 3321. As explained hereinbefore, there is no probationary period for executives selected for appointment in the Federal Executive Service. Because of that fact, this section (5 U.S.C. 3321) would have no applicability to the Federal Executive Service.

- § 3322. Career appointments in the Federal Executive Service are made under employment agreements of 3 years' duration. As the concept of temporary, indefinite, or permanent employment in a particular position is inconsistent with the use of employment agreements under the Federal Executive Service program, 5 U.S.C. 3322 has no proper applicability to the Service.

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- § 3341. This section which controls "details" within an Executive department or a military department would not be applicable to members of the Federal Executive Service for two reasons. First, members of the Federal Executive Service do not occupy "positions" as that term is used for other civil service purposes and a detail is made between different positions. Second, members of the Federal Executive Service are required to agree to accept any proper assignment of duties and responsibilities which would make 5 U.S.C. 3341 meaningless to those executives.

- § 3361. "Promotion", to which 5 U.S.C. 3361 relates, is a change of an employee from a lower graded position to a higher graded position (see 5 CFR 210.102(b)(11)). As members of the Federal Executive Service do not occupy positions, 5 U.S.C. 3361 would be inapplicable to them. Moreoever, as provided in 5 U.S.C. 3139, the pay of an executive is not based on "position" but on other statutory factors which make the promotion-examination concept in 5 U.S.C. 3361 not relevant to the Service.

Subparagraphs (B) and (C) will repeal sections 3324 and 3325 of title 5, United States Code (and amend the analysis of chapter 33 of that title to evidence their repeal). These sections are repealed as there will no longer be any positions in GS-16, 17, or 18 by reason of the amendment of the General Schedule by this bill, and because 5 U.S.C. 3104 (to which § 3325 refers) will be repealed by this bill as explained hereinbefore. The repeal of these two sections, which have been referred to as special "supergrade" authorities, is part of the statutory plan, which will be accomplished by this bill, to abolish all special authorities to fill these executive-type positions and concentrate the authorities and the controls under this legislation. The accomplishment of this plan will significantly simplify executive management control within government.

Paragraph (5) amends the definition section of chapter 42 of title 5, United States Code, relative to "Performance Rating" to exclude from that chapter members of the Federal Executive Service and employees under an agency program of executive management (a regulatory program under 5 U.S.C. 3143(a)). This amendment will exclude these executives from the performance rating provisions of chapter 42. This exclusion is based on the fact that a uniform performance rating system for executives would not be in keeping with the basic concepts of the Federal Executive Service program. Each agency will have to establish effective and tailor-made processes to determine the quality of the performance of its executives. If an executive's job performance is poor he will be removed for inefficiency. If his performance is adequate but not up to the high level expected his employment agreement will not be renewed. If his performance is of a

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high quality his pay may be raised. An executive cannot be involved in a reduction in force, therefore, there is no need to rate him for the purposes of 5 U.S.C. 3502(a)(4) which refers to the use of "efficiency or performance ratings" as a reduction-in-force retention factor.

Paragraph (6) makes amendments to chapter 51 ("Classification") of title 5, United States Code, to accommodate the new Federal Executive Service program.

Subparagraph (A) of paragraph (6) will amend 5 U.S.C. 5102(c)(25) to delete the reference to GS-18 (as that grade is deleted from the General Schedule by this bill) and to insert in lieu thereof a reference to grade GS-15 (the new maximum grade in the General Schedule). The words "by a statute other than this chapter" are used instead of "by other statute" for better precision and clarity.

Subparagraph (B)(i) of paragraph (6) will amend 5 U.S.C. 5104 by deleting the reference to GS-18 (as there will be no GS-18 in the General Schedule after the enactment of this Act) and, in lieu thereof, inserting a reference to GS-15 which will -- after enactment -- be the top grade in the General Schedule.

Subparagraph (B)(ii) of paragraph (6) will repeal paragraphs (16), (17), and (18) of 5 U.S.C. 5104. These three paragraphs describe the classes of positions the duties of which warranted placement of a position in GS-16, 17, or 18. As there will be no General Schedule grades at GS-16, 17, and 18, these statutory position-description provisions are no longer necessary.

Subparagraph (C) of paragraph (6) will repeal 5 U.S.C. 5108, the basic statutory provision governing the classification of positions at GS-16, 17, and 18. Section 5108 is no longer necessary because there will be no General Schedule grades GS-16, 17, and 18 after the bill is enacted, and there will be no need to fix and distribute numbers of positions at grades GS-16, 17, and 18 as the Federal Executive Service program will supply a better and more efficient basis for creating executive-level appointment authorities.

Subparagraph (D) of paragraph (6) will repeal that part of 5 U.S.C. 5109 which was a statutory pay fixing authority for the GS-18 position of the Director of the Bureau of Retirement, Insurance, and Occupational Health of the Civil Service Commission. That position will be covered under the Federal Executive Service.

Subparagraph (E) of paragraph (6) will repeal 5 U.S.C. 5114 which required the Civil Service Commission and other agency authorities to make reports to Congress on positions in grades GS-16, 17, and 18. The section is unnecessary both by reason of the fact that the General Schedule

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will no longer include GS-16, 17, and 18, but also by reason of the fact that Congress will be fully informed as to the operation of the Federal Executive Service under 5 U.S.C. 1308(f) and under 5 U.S.C. 3143(a) by the new provisions in subchapter II of chapter 31 of the United States Code.

Subparagraph (F) of paragraph (6) will amend the analysis of chapter 51 of title 5, United States Code, to show that sections 5108 and 5109 of that chapter have been repealed.

Subparagraph (G) of paragraph (6) will amend section 5115 by deleting the reference therein to section 5114 of title 5, United States Code, which will be repealed by section 1(6)(E) of the bill.

Paragraph (7) makes several amendments to chapter 53 ("Pay Rates and Systems") of title 5, United States Code, needed by reason of the creation of the Federal Executive Service.

Subparagraph (A) of paragraph (7) will amend 5 U.S.C. 5304 ("Presidential policies and regulations") to include therein a reference to subchapter II of chapter 31 of title 5 of the United States Code (the subchapter governing the Federal Executive Service). This amendment will include the Federal Executive Service among the pay authorities which the President considers in fixing policies and regulations relating to such matters as pay comparability with private enterprise, the adequacy of Federal statutory pay structures, and the relationship of Federal statutory pay rates and private enterprise pay rates.

Subparagraph (B) of paragraph (7) will amend the General Schedule set out in 5 U.S.C. 5332 by repealing all references therein to GS-16, 17, and 18 and the annual rates for those grades. By reason of the creation of the Federal Executive Service by this Act -- and the other statutory pay fixing provisions of this Act -- there is no need for grades GS-16, 17, and 18 in the General Schedule.

Subparagraph (C) of paragraph (7) will repeal 5 U.S.C. 5361 which was a special pay fixing authority for the scientific and professional positions established under 5 U.S.C. 3104 (5 U.S.C. 3104 will also be repealed by this bill as explained hereinbefore). Because of the new Federal Executive Service program there is no need for special pay fixing provisions such as 5 U.S.C. 5361 as the positions covered by that section will either be in the Federal Executive Service or under an agency program of executive management after the enactment of the bill.

Subparagraph (D) of paragraph (7) will amend 5 U.S.C. 5362 so that it applies only to hearing examiner positions that are paid under the General Schedule. The majority of hearing examiners appointed under 5 U.S.C. 3105 are in grades higher than GS-15 and, after the enactment of this bill, those higher paid hearing examiners will have their pay fixed by the Civil Service Commission under newly added 5 U.S.C. 3143(c) making 5 U.S.C. 5362 applicable only to hearing examiners in General Schedule positions.

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Subparagraph (E) of paragraph (7) will amend 5 U.S.C. 5363 by deleting the reference therein to GS-18 and inserting in lieu thereof a reference to the maximum rate payable under newly added 5 U.S.C. 3139. This is a technical amendment needed by reason of the repeal of the GS-18 grade and pay rate.

Subparagraph (F) of paragraph (7) will amend 5 U.S.C. 5364 to include therein a reference to the maximum rate of pay payable under the Federal Executive Service program. This amendment is required because of the repeal of those provisions in the General Schedule that related to GS-16, 17, and 18. That repeal would leave this section incomplete which makes it essential to supplement it by the inclusion therein of the reference to the maximum Federal Executive Service pay rate.

Subparagraph (G) of paragraph (7) will amend the analysis of chapter 53 of title 5, United States Code, to show the repeal of 5 U.S.C. 5361.

Paragraph (8) will amend 5 U.S.C. 5595(a)(2) relative to severance pay to delete an obsolete reference to GS-18 and, in lieu thereof, include a reference to the maximum rate payable under newly added 5 U.S.C. 3139; and by including a reference to members of the Federal Executive Service in 5 U.S.C. 5595(a)(2)(ii). The latter insertion is needed because members of the Federal Executive Service have a definite time limitation on their appointment (3 years) and if they are not excepted from 5 U.S.C. 5595(a)(2)(ii) none of them could receive severance pay as is intended under the newly added 5 U.S.C. 3140. The first amendment is a technical one made necessary by the repeal of the General Schedule reference to GS-18.

Paragraph (9) would amend 5 U.S.C. 7154 (which prohibits discrimination because of race, color, creed, sex, or national origin in classification and pay fixing) to include a reference to the Federal Executive Service and other pay fixing authorities in subchapter II of chapter 31 of title 5, United States Code. This amendment is essential as the incumbents of the positions formerly in GS-16, 17, and 18, who were governed by this section 7154, are now in the Federal Executive Service and, of course, are still fully deserving of this type of statutory protection. The section is also amended to delete a reference to 5 U.S.C. 3324 which this bill would repeal.

Paragraph (10) would amend chapter 77 ("Appeals") of title 5, United States Code, by adding a new section 7702 to provide for appeals to the Civil Service Commission by members of the Federal Executive Service and employees under a regulatory program of executive management established under the newly added 5 U.S.C. 3143(a) who have the equivalent of career tenure, who feel their employing agency has violated the employment agreement (either initial or renewal) under which they are serving. The appeals that may be filed under this added section 7702 could relate to such things as an assignment of duties alleged to be of a non-executive character or removal from employment during an employment agreement.

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The section is patterned after 5 U.S.C. 7701 which has, since 1944 served as the statutory basis for the appeals of preference eligibles. Paragraph (10) also amends the analysis of chapter 77 of title 5, United States Code, to show the newly added 5 U.S.C. 7702.

Section 2

Section 2 is a transition section which will enable the present incumbents of positions in GS-16, 17, and 18, or in the GS-16, 17, or 18 pay range, to either enter the Federal Executive Service or an agency program for executive management or continue under the appointment held immediately before the effective date of the bill. Any needed transition provisions for an agency program for executive management will be issued under the regulatory authority in new section 3143(a) and will provide the same rights as set out below.

Subsection (a)(1) is applicable to career and career-conditional employees who were in GS-16, 17, and 18, or in the GS-16, 17, or 18 pay range, immediately before the effective date and who are not excluded from coverage under the new subchapter II of chapter 31 of title 5, United States Code. These career and career-conditional employees have a choice between remaining in the employ of the agency under the same appointment they held before the Federal Executive Service was created or entering the Federal Executive Service in their employing agency. If such an employee elects to enter the Federal Executive Service he will be given an initial employment agreement for 3 years as specified in the new § 3137 of title 5, United States Code, without having his qualifications reviewed or approved by a Qualifications Board. The entry into the Federal Executive Service of such an employee will have no effect on any of his Federal employment rights or benefits such as leave, retirement, life insurance, and health benefits. If the employee elects to remain in the agency under the appointment he held before the Federal Executive Service was created, he is entitled to retain that appointment (with the same rights and benefits) until such time as he leaves it by transfer, retirement, resignation, death or whatever.

Subsection (a)(2) of section 2 applies to employees who were in the excepted service immediately before the effective date of the bill. It distinguishes between two types of excepted employees paid in the GS-16, 17, or 18 pay range.

The first type is the excepted employee who, prior to the effective date, was in no sense a "career" employee, i.e., an employee in Schedule C or serving under a noncareer executive assignment. This type of noncareer, excepted employee had no true tenure before the effective date and, under this subsection (a)(2), he would be entitled to the same type of appointment, a noncareer appointment.

The second type includes all other excepted employees regardless of whether they were excepted by statute or under Schedule A or B. Any of this second type of excepted employees may, at the election of his employing agency, be offered a career appointment. It is to be emphasized that this is an option

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of the employing agency, not a right of the excepted employee. The employee who accepts the agency's offer becomes a career appointee without having his qualifications reviewed or approved by a Qualifications Board. If the former excepted employee accepts a career appointment, he has all the rights of any other career appointee. If such an excepted employee accepts a career appointment it will have no effect on his rights or benefits such as leave, retirement, life insurance, and health benefits.

If an agency does not elect to offer this second type of excepted employee a career appointment or if the employee does not wish to accept such an appointment, the agency is required to allow him to remain in its employ in the same excepted appointment he held immediately before the effective date of the bill with no change in his tenure and no loss of any employment-protection benefits he had immediately before that effective date. This means that if this excepted employee had protection under 5 U.S.C. 7512 and 7701, he retains that protection. In addition, if he was paid under the General Schedule, he will be paid in the future in the same manner under section 2(b) of the bill rather than under the new 5 U.S.C. 3139 applicable to members of the Federal Executive Service.

Subsection (a) (3) of section 2 authorizes the Civil Service Commission to prescribe regulations to carry out the purposes of section 2. The subsection expressly requires that the regulations include an appellate procedure so that an employee who believes his agency has not given him a right to which he believes he was entitled under the section will be able to have an outside authority review the matter and, when warranted, direct that appropriate corrective action be made. Agencies are required, by section 2(a) (3), to take whatever corrective action the Commission recommends in an appeal under the section.

Subsection (b) of section 2 (except the provision concerning the Federal Bureau of Investigation) establishes a temporary pay-fixing authority for incumbents of positions that were in, or paid at a rate of, GS-16, 17, 18, and P.L. 313-type positions immediately before the effective date of the bill, but who choose not to enter the Federal Executive Service or an agency program of executive management or who are occupying positions in the excepted service which were not brought under the FES or an agency program by the agency. The subsection is required because after the effective date there will be no General Schedule grades above GS-15.

Paragraph (1) of subsection (b) defines the coverage of the subsection and paragraph (2) constitutes the necessary express authority to allow agencies with administrative pay-fixing authority to continue that authority after the bill is enacted for the positions covered.

Subsection (b) (2) (B) is a special pay fixing authority for the Federal Bureau of Investigation which allows the Director of that Bureau to fix the pay of 140 positions in the Bureau by administrative determination without regard to the other provisions of the Act but within the same rate limits.

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In lieu of GS-16, 17, and 18, paragraph (3) of subsection (b) creates three new grades (Grade 16, Grade 17, and Grade 18) which have identical annual rates and steps to those in the present GS-16, 17, and 18. It is essential to keep in mind that this provision (indeed all of section 2 and section 3 of the bill except those provisions referring to the Federal Bureau of Investigation) is temporary legislation -- not part of title 5, United States Code, which contains only permanent legislation -- which will remain in effect only so long as positions of the type referred to in paragraph (1) of subsection (a) exist.

The remainder of paragraph (3) of subsection (b) of section 2 is designed to continue the pay-fixing system for the former GS-16, 17, and 18 positions so long as they exist and are filled. These positions require the Civil Service Commission to issue regulations establishing a pay-fixing system so that employees who occupy positions in Grades 16, 17, and 18 after the effective date will continue to be paid in the same manner as they were before that effective date. These regulations will have the full weight and effect of statute and pay determinations made in accordance with the regulations will be binding on all administrative, certifying, payroll, disbursing, and accounting officials. In the regulations, the Commission will include provisions that will govern employees in Grades 16, 17, and 18 with respect to the rate of pay on change of position or change in type of appointment, periodic and additional step increases, and pay saving. Each of these regulatory provisions will give to the Grade 16, 17, or 18 employee the same rights and benefits he had when he was paid under the General Schedule. It is the legislative purpose in including section 2(b) to ensure that the employees who are placed in Grades 16, 17, and 18 by the enactment of this bill will continue to be paid on the same basis and under an identical pay-fixing system as they were being paid under the General Schedule immediately before the effective date of the bill.

Section 3

Section 3(a) repeals all statutes and other authorities which authorized positions in, or paid at a rate of GS-16, 17, and 18, and positions of a P.L. 313-type, immediately before the effective date of the Act, and, concurrently, authorizes each such position to be continued under the authority of this subsection (a). These positions are to be continued under the authority of section 3(a) until they are brought into the Federal Executive Service or under an agency program of executive management. Most of the positions to which this section refers are positions held by employees immediately before the effective date in GS-16, 17, and 18, or in the GS-16, 17, or 18 pay range, who, under authority of section 2 of the bill, elect not to enter the Federal Executive Service but, instead, retained their position in the new Grade 16, 17, or 18. When those employees leave these

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positions, the duties of these positions will be performed by members of the Federal Executive Service or employees under an agency program of executive management, but until that occurs this section 3(a) serves as the legal authority to continue the position at whatever grade it was in (but without the "GS" title) immediately before the effective date of the Act. As expressly provided in section 3(a) (2), subsection (a) does not apply to the administrative pay-fixing authority provided the Federal Bureau of Investigation in section 2(b) (2)(B) of the bill.

Subsection (b) of section 3 is an "accounting" provision which requires a report on the positions continued under section 3(a). This report will disclose to the Civil Service Commission the exact number of these positions--and the former authority under which they existed before the effective date of the bill -- so that control can be maintained over them in the future. By the use of this subsection the Commission will be able to determine just when all these positions are eliminated.

Section 4

Section 4 is included to make positive that the enactment of the bill will not decrease the pay, allowances, compensation, or annuity of any person.

Section 5

Section 5 is the usual severability provision.

Section 6

Section 6(a) sets the general effective date of the Act at the start of the first fiscal year that begins 270 days following the date of enactment. This period of time is needed to allow the Civil Service Commission and the agencies time to prepare for the changes that will be brought about in the area of executive management by the enactment of the bill. During this period the Commission will establish Qualifications Boards required by the new 5 U.S.C. 3138. Also, during this period the Commission will prepare the regulations authorized by section 2(b) which will govern pay fixing for the newly created Grades 16, 17, and 18 and do such other things as are necessary to make the bill operational.

Section 6(b) sets the effective date of the stewardship reporting provisions 90 days earlier than the general effective date of the Act. This earlier effective date for those provisions will enable the Civil Service Commission and the agencies having regulatory programs of executive management to prepare and submit the required reports prior to the general effective date so that on that general effective date the necessary number of executive appointments, ratios, and executive pay averages will be authorized.

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